

JUL 31 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

THOMAS ALLEN WARNER, Sr., a/k/a
THOMAS A. WARNER,

Defendant - Appellant.

No. 05-50512

D.C. No. CR-03-01271-MMM

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
Margaret M. Morrow, District Judge, Presiding

Submitted July 22, 2008^{**}

Before: B. FLETCHER, THOMAS, and WARDLAW, Circuit Judges.

Thomas Allen Warner, Sr. appeals from the ten-month sentence imposed
following his guilty-plea conviction for mail fraud and false statements, in

^{*} This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

violation of 18 U.S.C. §§ 2(b), 1001, and 1341. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we vacate and remand.

Warner contends that the district court erred by not applying a two-level downward adjustment for acceptance of responsibility under U.S.S.G. § 3E1.1(a). We conclude that the district court did not err because Warner's statements during his plea and sentencing colloquies, as well as the timing of his admissions, were inconsistent with acceptance of responsibility. *See United States v. Scrivener*, 189 F.3d 944, 948-49 (9th Cir. 1999); *see also* U.S.S.G. § 3E1.1, cmt. n.1(h) (2002).

Warner also contends that his sentence is unreasonable because the district court ignored his history and characteristics when fashioning the sentence. We conclude that there was no procedural error and that Warner's sentence is substantively reasonable. *See United States v. Carty*, 520 F.3d 984, 995-96 (9th Cir. 2008) (en banc).

Finally, Warner contends that a special condition of supervised release prohibiting him from filing any claim for a refund of taxes after filing initial returns should be vacated because it is not reasonably related to his offense, and it is not narrowly tailored to be the least restrictive as possible. We conclude that this condition as written is not reasonably related to the sentencing factors listed in

18 U.S.C. § 3553(a). *See United States v. Betts*, 511 F.3d 872, 876-81 (9th Cir. 2007).

VACATED and REMANDED.